IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3973 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRIBEN D/O PARAG RAISINGH

Versus

BABUBHAI DEVLABHAI

Appearance:

1. Special Civil Application No. 3973 of 1990

MR RN SHAH for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

MS HARSHA DEVANI, ASSTT.GOVERNMENT PLEADER for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 20/02/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India, praying for quashing and setting aside the order passed by the Special Secretary, Revenue

Department, Gujarat State, on 20th September, 1989 in SRD No. 43 of 1988, reversing the order passed by the lower authorities i.e. Deputy Collector, Vyara in RTS Appeal No. 48/86 and Collector, Surat in Revision Application No. 466 of 1987, in which the entry No. 906 mutated by Talati-cum-Mantri on record of rights on 18.6.1982 was confirmed.

It is the case of the petitioner that the petitioner is daughter of Paragbhai Raisingh, who is the co-sharer with deceased Devlabhai with regard to the property bearing Survey No. 294/Paiki 3 Acres - 6 Gunthas of land situated at village Angandhara, Tal. Mauva, Dist. Surat. Father of the petitioner Paragbhai Raisingh died in the year 1982 and thereafter, name of the petitioner as legal heir was entered in the mutation record vide entry No. 906 on 18.6.1982. The said entry No. 906 was duly certified on 22.7.1982.

Being aggrieved by the said entry, respondents Nos. 1 to 3 filed an appeal before the Deputy Collector, Vyara after the expiry of a period of more than 4 years. The Deputy Collector, vide his order dated 14.9.1987, dismissed the appeal by holding that the application has been made with a malafide intention to harass the petitioner and it was barred by limitation. It was further observed that though the respondents had knowledge with regard to the said entry, they have not challenged it for a long period after 1982.

Being further aggrieved by the said order of the Deputy Collector, the respondents Nos. 1 to 3 has preferred a Revision Application before the Collector, Surat, who, by his order dated 3.8.1989, dismissed the Revision Application, by holding that there was already entry in the name of the petitioner in village Form No. 7/12 in the year 1961-62, having tenancy right as tenant alongwith Devlabhai and that it was in the joint name of Devlabhai & Paragbhai and more particularly the name was mutated after the consent of the opponents pursuant to the notice served under Section 135-D.

Being aggrieved and dis-satisfied with the said order of the Collector, the respondents preferred Revision Application No. SRD/43/88 before the Special Secretary to the State of Gujarat at Ahmedabad, who by his order dated 20.9.1989, allowed the Revision Application and set aside the orders of the Deputy Collector and Collector. It is this order which is under challenge in the present petition.

Mr. R.N. Shah, learned Advocate appearing for the petitioner submits that Special Secretary has committed a grave error in allowing the Revision Application, and if at all the respondents had any grievance against the mutation of the entry, then they should be directed to file Civil Suit, and he ought not to have interfered with the finding of lower authorities, in Revision Application. He submitted that the authorities below have recorded name of the petitioner as the co-sharer after hearing the respondents and after obtaining their consent in the matter. Mr. Shah has further submitted that the petitioner was in possession of the land in question for the last several years and after the death of the father, her name was mutated in the year 1982. The said entry was not challenged by the present respondents despite the fact that the notice was already issued on them. Mr. Shah has further submitted that the respondents have already given their consent for mutating the name of the petitioner at the time when entry No.906 was mutated and while said entry was mutated entire record was seen by the authorities and it was not open for the respondents to challenge the said entry in the revisional proceedings before the Special Secretary. Mr. Shah has also submitted that the Special Secretary has exceeded his jurisdiction while entertaining and allowing the said Revision Application as all the three authorities below have decided the issue in favour of the present petitioner, and the entry which was mutated was confirmed by the Deputy Collector as well as by the Collector. It is also the submission of Mr. Shah that the Special Secretary has committed a grave error both on facts as well as on law and the said order is not sustainable. He has therefore submitted that the order passed by the Special Secretary in the Revision Application is required to be quashed and set aside.

Despite the service of notice, nobody appears on behalf of the respondents Nos. 1 to 3. Though they are vitally concerned with the issue raised before this Court, they had chosen not to remain present. This itself shows that they are not interested in defending the order passed by the Special Secretary in their favour.

Ms. Archana Raval, learned Assistant Government Pleader appearing for the respondent No.4 supports the order passed by the Special Secretary. She has submitted that when the entry No. 906 was mutated, there was no basis for the said entry and hence the lower authorities have committed an error while mutating the said entry and confirming it without having any basis for the same.

She, therefore, submitted that the Special Secretary has rightly quashed and set aside the orders passed by the authorities below and hence, the order of the Special Secretary does not call for any interference by this Court.

After having heard the learned Advocate appearing for the respective parties, and after having gone through the orders passed by the authorities below, I am of the opinion that the scope and ambit of the jurisdiction lying with the Special Secretary while deciding the Revision Application is very limited. When the entry was made in the year 1982 and challenge against the said entry was turned down by the Deputy Collector and the said order of the Deputy Collector was confirmed by the Collector, it was not open for the Special Secretary in revisional proceedings to disturb the said finding of fact given by them. Moreover, it has come on record and that has been verified by the authorities below that the entry was effected after following due procedure and after recording statement of the parties and after issuance of the requisite notice under the provisions of law. It is also a matter of much significance that though the entry was effected in the year 1982, it was not challenged for more than 4 years and it seems that because of some dispute which might have been arisen between the parties in between, they have chosen to challenge the said entry in the year 1986. The fact however remains that initially the consent was given and the statements were also recorded to that effect. In this view of the matter and considering the limited scope and ambit of the revisional powers vested with the Special Secretary, this Court is of the opinion that the Special Secretary has exceeded his jurisdiction while disturbing the orders passed by the authorities below. The order is therefore not sustainable and hence, this Court is of the view that the same requires interference by this Court by exercising power under Article 227 of the Constitution of India. The petition is therefore allowed. The order passed by the Special Secretary is hereby quashed and set aside and the orders passed by the authorities below are restored. Rule is made absolute with no order as to costs.

(K.A. Puj, J.)

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